



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201029019

APR 29 2010

U.I.L. 408.03-00

SE: T: EP: RA: 74

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xxxx

xxxx

Legend:

Taxpayer A = xxxx

IRA X = xxxx

Bank B = xxxx

Account Y = xxxx

Bank C = xxxx

Amount N = xxxx

Date 1 = xxxx

Date 2 = xxxx

Dear xxxx:

This is in response to your letter dated October 31, 2009, as supplemented by correspondence dated December 31, 2009, and January 2, 10 and 31, 2010, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A, age 53, maintained a traditional individual retirement account, IRA X, with Bank B. Taxpayer A represents that he received a distribution of Amount N from IRA X and that he intended to roll over Amount N into another IRA.

Taxpayer A asserts that his failure to accomplish a rollover of Amount N within the 60-day period prescribed by section 408(d)(3) of the Code was due to complications of his ongoing medical condition which impaired his ability to make a rollover timely. Taxpayer A further asserts that Amount N has not been used for any purpose.

Taxpayer A represents that on Date 1 IRA X was invested in a 12 month Certificate of Deposit (CD). On Date 2, shortly after the maturity date of the CD, Taxpayer A liquidated the CD and withdrew Amount N which constituted the account balance of IRA X. In addition, on Date 2, Taxpayer A deposited Amount N into Account Y, a non-IRA account maintained at Bank C, intending to reinvest the funds in an IRA within 60 days.

Taxpayer A represents that his medical condition became worse and that during the 60-day period following the distribution of Amount N from IRA X, he underwent evaluative tests and he experienced complications from medications which were prescribed to assist him. Taxpayer A represents that the stress of dealing with his medical condition and the effect of his medication impaired his ability to complete a timely rollover.

Statements from Taxpayer A's treating physician and medical documentation submitted with this request indicate the severity of Taxpayer A's medical condition and the extent of treatment he received.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount N from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other

property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount N distributed from IRA X was due to his medical condition during the 60-day period which impaired his ability to make a timely rollover.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount N from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount N into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount N will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact xxxx, I.D. # xxxx, by telephone at xxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose